

**ORIGINAL**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )

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Eligibility for the Specialized )  
Mobile Radio Services )  
and Radio Services in the )  
220-222 MHz Land Mobile Band )  
and Use of Radio Dispatch )  
Communications )

GN Docket No. 94-90

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**REPLY COMMENTS OF**  
**CONSOLIDATED COMMUNICATIONS CORPORATION**

Consolidated Communications Corporation ("Consolidated"), by its attorneys, hereby submits Reply Comments in support of the captioned Notice of Proposed Rule Making, released August 11, 1994. Specifically, Consolidated believes that Section 90.603(c) of the Commission's Rules should be modified to eliminate the existing restriction against the licensing of Specialized Mobile Radio ("SMR") systems to wireline telephone common carriers.

**Interest Of Consolidated**

Consolidated is affiliated with Consolidated Telephone Cooperative, an independent local exchange carrier ("LEC") founded by the residents and businesses of rural, southwestern North Dakota. In 1988, Consolidated applied for an SMR license, in response to the need for adequate SMR service in the southwestern area of North Dakota. At the time, Consolidated was not aware of the prohibition on wireline provision of SMR services. Based on Consolidated's affiliation with a wireline carrier, the Commission subsequently rescinded Consolidated's license on September 19,

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1989.<sup>1</sup> Consolidated Communications desires to provide SMR service without the regulatory restraints currently imposed by the Section 90.603(c) wireline restriction.

**Overwhelming Support For Elimination  
Of The Wireline Prohibition**

Consolidated agrees with the near unanimous response by commenters that the Commission's wireline restriction on the provision of SMR services should be eliminated. Of the twenty-five commenters who discussed elimination of the wireline prohibition, twenty four supported it.<sup>2</sup> This overwhelming support is testimony to the proposal's strength. Even Nextel, the nation's largest SMR provider, supports lifting the wireline restriction, leaving SMR WON, a new trade association of certain SMR operators, as the proposal's only opponent.

**Elimination Of The Wireline Restriction Will Enhance  
SMR Service And Wireless Competition In Rural Areas**

Most relevant for Consolidated and the rural North Dakota

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<sup>1</sup> Memorandum Opinion And Order, 4 FCC Rcd 7025 (1989)

<sup>2</sup> The following commenters support the elimination of the wireline restriction: American Mobile Telecommunications Association, Inc.; Bell Atlantic Mobile Systems, Inc.; BellSouth Companies; Cellular Telecommunications Industry Association; Century Telephone Enterprises, Inc.; East Otter Tail Telephone Company; GTE Service Corporation; Geotek Communications, Inc.; Industrial Telecommunications Association, Inc. and Council of Independent Communication Suppliers (jointly); National Association of Business and Educational Radio; Nextel Communications, Inc.; Nynex Companies; Pacific Bell; Personal Communications Industry Association; Polar Communications Mutual Aid Corporation; Rural Independents; Puerto Rico Telephone Company; RAM Mobile Data USA Limited Partnership; Rochester Tel Cellular Holding Corporation; SNET Mobility, Inc.; Southwestern Bell Corporation; Sprint Corporation; Telephone and Data Systems, Inc; United States Telephone Association; and United Telephone Mutual Aid Corp.

individuals and businesses it would serve is the fact that elimination of the wireline restriction will bring service, competition, and innovation to rural regions. Numerous commenters specifically discuss this issue and the boon that elimination of the wireline restriction will create for the rural areas which remain largely unserved or underserved by SMR operators.<sup>3</sup>

While metropolitan areas typically maintain waiting lists of applicants for SMR frequencies, rural areas, by contrast, remain underserved. In fact, in some rural areas, absolutely no SMR service exists. Despite Commission attempts to encourage the growth and development of rural SMR service by, for example, permitting rural SMR licensees to expand their trunked systems without meeting loading requirements,<sup>4</sup> relatively few SMR providers have made the substantial investments necessary to bring either traditional or advanced SMR services to rural areas. However, rural telephone companies have an established track record of bringing new services to their rural communities.

SMR WON, the only commenter opposed to elimination of the wireline restriction, nevertheless claims that lifting the wireline ban, even as to small telcos, will result in competitive harm to independent SMR operators.<sup>5</sup> This argument fails to recognize the

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<sup>3</sup> See e.g., East Otter Tail Telephone, p. 2; Industrial Telecommunications Association, Inc. and Council of Independent Communication Suppliers, p. 4; National Association of Business and Educational Radio, p. 5; and Rural Independents, p. 5.

<sup>4</sup> 47 C.F.R. §90.631(d); Amendment of Part 90, Subparts M and S, supra at para. 71

<sup>5</sup> SMR WON Comments, p. 15.

fact that wireline entry will introduce SMR services in rural areas where no SMR service has heretofore existed or where the only SMR service provider is an entrenched solo operator. Definitionally, there is no competition in such rural areas, and there can therefore be no harm.

SMR WON also fails to substantiate its claim that small telephone companies have an unfair "ability to cross-subsidize or finance their mobile operations from affiliate finance companies or third party lending institutions."<sup>6</sup> Consolidated's parent company, like all small telephone cooperatives, is owned and operated by the very persons it serves. Neither Consolidated nor its parent has its own finance affiliate, and they compete for funds with other businesses, large and small, just like the SMR operators.

History shows that rural telephone companies are the only entities that can be relied upon to bring SMR services to the sparsely populated or otherwise high-cost areas. No other entity has the vested interest in the community that a cooperative has. Moreover, SMR service can be provided more flexibly and on a smaller geographic scale than cellular and PCS services, and it is therefore better able to meet the service needs and capabilities of both rural telephone companies and rural residents. North Dakota farmers and ranchers could operate much more efficiently if they had access to reliable and reasonably-priced SMR dispatch communications that would permit them to maintain contact with

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<sup>6</sup> SMR WON Comments, p. 15.

their trucks, tractors, combines and other vehicles. Likewise, interconnected SMR services would provide an attractive service option for rural residents who live or travel outside reliable cellular coverage areas, or who do not wish to pay generally higher cellular service rates. Moreover, there are still many areas of North Dakota that do not have cellular service as an option at all.

As such, elimination of the present wireline/SMR eligibility restriction represents the best hope at this time for the rapid development of needed SMR services in unserved and underserved rural areas.

**Regulatory Parity Has Replaced The Need For  
Dual Market Structures And Separate Eligibility Standards**

Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 amended Section 332 of the Communications Act to create regulatory parity among similar mobile services. In implementing this legislation, the Commission determined that SMR systems providing interconnected service will be treated as common carriage services, and will be regulated under the Commercial Mobile Radio Service ("CMRS") classification, together with cellular, PCS and other specified mobile services.<sup>7</sup> The Commission additionally indicated that even non-interconnected SMR systems may be classified and regulated under as CMRS if they are found to be functionally equivalent to CMRS providers.<sup>8</sup> In other words, most

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<sup>7</sup> 47 C.F.R. § 20.9(a); Second Report And Order in Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1451, 1468, 1510 (1994).

<sup>8</sup> Id. at 1447-48.

SMR operators will henceforth be common carriers, just like wireline telephone companies. Indeed, the Commission has determined that all CMRS services (including SMR, cellular and broadband PCS) are competing services or have the reasonable potential to become competing services in the CMRS marketplace, and they are therefore "substantially similar" services that should be subject to comparable regulatory requirements.<sup>9</sup> At the present time, there are no significant restrictions against wireline telephone companies obtaining cellular licenses,<sup>10</sup> or broadband PCS licenses.<sup>11</sup> Therefore, regulatory symmetry requires that there should no longer be any significant restrictions against wireline companies holding SMR licenses.

Despite the Commission's accomplishments with regulatory parity, SMR WON argues that the dual regulatory structure established by the Commission in the 1970s for 800 MHz mobile services was "successful in providing competing services at affordable prices" and allowing smaller businesses "to afford to construct and operate the SMR systems, and to compete successfully."<sup>12</sup> This argument simply fails to recognize the

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<sup>9</sup> Third Report And Order in Implementation of Sections 3(n) and 332 of the Communications Act, FCC 94-212, paras. 10-14 and 37-79 (released September 23, 1994).

<sup>10</sup> 47 C.F.R. §§ 22.901, 22.902

<sup>11</sup> Broadband PCS Second Report And Order, 8 FCC Rcd 7700, 7751-52 (1993).

<sup>12</sup> SMR WON Comments, p. 7.

critical fact that Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 amended Section 332 of the Communications Act precisely to eliminate dual regulatory structures and to create regulatory symmetry. Given the fact that there are no significant restrictions against wireline telephone companies obtaining cellular licenses, 47 C.F.R. §§ 22.901, 22.902, or PCS licenses, Broadband PCS Second Report And Order, 8 FCC Rcd 7700, 7751-52 (1993), regulatory parity clearly requires that there likewise be no restrictions against wireline companies obtaining SMR licenses.

**The SMR Industry Is Sufficiently  
Mature To Permit Wireline Entry**

SMR is a mature and well-established industry. The Commission's early attempts to preserve the SMR service for small entrepreneurs have been largely overtaken by the acquisition program of Nextel Communications, Inc. ("Nextel"), and will be further changed by Nextel's recent or pending mergers with Dial Page, Inc. and OneComm Corp., and acquisition of Motorola's SMR assets.

Despite the growth of the SMR industry in general and the rise of Nextel in particular, SMR WON nevertheless argues that the SMR industry is not "sufficiently well established" to permit the entry of wireline telephone companies, and that SMR providers will not be able to effectively compete with wireline companies.<sup>13</sup> Yet, a twenty year old industry can hardly be considered less than mature

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<sup>13</sup> SMR WON Comments, pp. 13-17.

by any standard. Indeed, SMR WON, in its comments, discusses the "competitiveness and innovation" of individual SMR operators and the success of the SMR industry in competing with cellular.<sup>14</sup> In light of these facts, SMR WON's subsequent assertions that the SMR industry is not well established are simply contradictory statements lacking substantiation. Moreover, Nextel itself supports elimination the wireline prohibition and notes the current competitiveness of the SMR industry, stating,

The passage of the Budget Act and the Commission's Second Report and Order have eliminated the basis for continued wireline prohibition. ...In light of this evolving competitive atmosphere, there is no compelling public policy basis for wireline eligibility restrictions in the SMR industry.<sup>15</sup>

**Further Congressional Action Before Eliminating  
The Wireline Restriction Is Unnecessary In Light  
Of Amended Section 332**

SMR WON claims that the Commission should await further Congressional consideration of the issue of telco competition before eliminating the wireline ban.<sup>16</sup> Such postponement of the Commission's proposal is simply unnecessary. The Commission adopted current Section 90.603(c) under its general rulemaking authority,<sup>17</sup> rather than pursuant to a specific statutory mandate, and can now eliminate the provision pursuant to the same general rulemaking authority. In addition, amended Section 332 of the Act

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<sup>14</sup> SMR WON Comments, pp. 13-17.

<sup>15</sup> Nextel Comments, p. 4.

<sup>16</sup> SMR WON Comments, p. 10.

<sup>17</sup> SMR Allocation Second Report and Order, 46 FCC 2d 752, 787 (1974)



gives the Commission full authority to review whether regulations affecting CMRS services such as SMR are in the public interest and whether they enhance competitive market conditions.<sup>18</sup> SMR WON's argument simply attempts to achieve delay, as there is no reason for the Commission to postpone consideration of its SMR wireline restriction until Congress passes further telecommunications legislation.

**The Commission's Interconnection And Accounting  
Safeguards Ensure That Wireline Carriers Do Not  
Discriminate Against Other SMR Operators**

SMR WON claims that the Commission's interconnection policies and accounting safeguards are inadequate substitutes for the wireline eligibility restriction.<sup>19</sup> However, its assertions are not substantiated by any instances where wireline companies have employed interconnection or other measures to discriminate against competing mobile service providers.<sup>20</sup> Indeed, the exemplary record of wireline telephone companies in furnishing nondiscriminatory interconnection to competitors and potential competitors in the cellular industry demonstrates that they will not engage in discriminatory interconnection practices with respect to the SMR industry. Consolidated knows of no problems, delays, or complaints with regard to wireline interconnection policies in the cellular arena. SMR WON's assertions about the inadequacy of the Commission's interconnection safeguards, because they are

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<sup>18</sup> 47 U.S.C. § 332(c)(1)(C)

<sup>19</sup> SMR WON Comments, p. 16.

<sup>20</sup> SMR WON Comments, pp. 16-17.

unsubstantiated, are without merit. There is every reason to believe that the Commission's extension of similar interconnection rights to SMR providers and other CMRS licensees<sup>21</sup> will be implemented in the same nondiscriminatory fashion as they have been for cellular licensees.

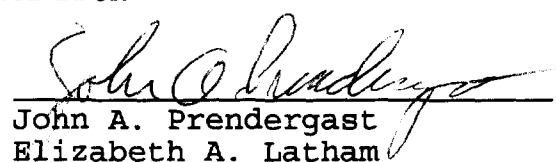
### Conclusion

For the foregoing reasons, Consolidated respectfully requests that Commission immediately adopt its proposal to eliminate the wireline prohibition on the provision of SMR services. Doing so will enhance SMR competition and bring much-needed SMR service to unserved and underserved rural areas.

Respectfully submitted,

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<sup>21</sup> Second Report And Order in Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1497-98 (1994).

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